IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

Crl. MC.No. 2015 of 2004(B)

CC.199/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PONNANI

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PETITIONER: ACCUSED:

1. SUBIN, S/O. A.A.SUGATHAN,
ARACKAL HOUSE, THALIKKULAM, THRISSUR.

2. STERLY, S/O. A.A.SUGATHAN,
ARACKAL HOUSE, THALIKKULAM, THRISSUR.

BY ADV. SRI.P.K.ASHOKAN
SRI.M.R.VENUGOPAL

RESPONDENTS: RESPONDENT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

ADDL. R2 IMPLEADED

2. K.A. RAVEENDRAN,
S/O. AYYAPPAKUTTY, KOLLARA HOUSE,
PATTURACKAL, VARIYAM LANE, THRISSUR - 1.

(ADDL. R2 IMPLEADED AS PER ORDER IN ORDER DATED 14.06.2005 IN CRL. M.A. NO. 10926/2004)

BY ADV. SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR
SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. M.C. NO. 2015 OF 2004 B

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Dated this the 11th day of January 2007

O R D E R

The petitioners, who are accused in C.C. No. 199/2003 in the file of Judicial First Class Magistrate Court, Ponnani with respect to the offence under sections 406, 408, 420 r/w 34 of Indian Penal Code, has sought for getting the above proceedings quashed. It is pointed out that on the basis of the complaint filed before the police FIR was registered under section 420 r/w 34 IPC. Subsequently the complainant has filed Annexure C, private complaint. Further proceedings with respect to the Annexure C is not initiated in the light of section 210 Cr.P.C. The police after investigation filed the final report which is Annexure D as per which the petitioners 1 and 2 have been implicated for the offences under sections 406, 408,420 r/w 34 IPC.

2. The police charge is that 1st accused/1st petitioner entrusted with the maintenance of accounts and supervision and conducting of the toddy shops of Ponnani range of which the complainant was the bidder during the period April 1998 to March 2001 has failed to render the accounts and fleeced and had misappropriated the amounts to the

tune of Rs. 13,69,288/- as well as Rs. 1,00,236/-. The latter amount represented the amount mentioned as deposited to the toddy welfare fund for January 2001, but not really remitted; and that both the accused/petitioners have acted in concert and committed breach of trust and cheating.

3. It is the contention of the counsel for the petitioners that the petitioners are close relatives of the defacto complainant i.e., sisters-in-laws' children and that the 1st petitioner was only helping the defacto complainant in the maintenance of his business from his college days onwards. It is pointed out that the defacto complainant was in the mean time involved in a criminal case for vending of spirit and was convicted and sentenced to undergo imprisonment for 7 years and that the matter is pending in appeal. It is contended by the counsel for the petitioner that Annexure A complaint submitted before the police on the basis of which FIR has been registered, did not contain allegations sufficient to attract the ingredients of the offences under sections 406 and 420 with respect to the second petitioner/second accused as there is no such case in the FIS. Evidently, investigation and final charge need not be confined to averments in the FIR registered. I find, in the subsequent statement

recorded of the defacto complainant under section 161 Cr.P.C contains allegations with respect to the role of the second petitioner as well. Section 161 statement of the witnesses produced also contain allegations against the second petitioner and his involvement in the offence. Sufficient materials has not been produced before this court to arrive at a proper finding. In the circumstances, I find no reason to quash the proceedings at this stage.

4. All the same, the petitioner may apply before the trial court for discharge and the court shall consider the contentions of the petitioners/accused on merit untrammelled by any of the observations contained in this order.

The Crl. M.C. is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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